

### **REMARKS**

This is in response to the non-final Office Action mailed on 22 August 2007 in which pending claims 1-5, 7-12, and 14 stand rejected.

Herewith Applicants amend claims 1, 5, and 7 (to patentably distinguish same (and those claims depending therefrom) over the cited and applied art of record), and cancel claim 14, and add no new claims.

Entry and favorable consideration of the amendments and remarks presented herewith is respectfully requested.

This Response is tendered in an attempt to place the application in condition for allowance and expedite passage of the claimed invention to ultimate issuance as U.S. Letters Patent.

#### **Objection to the Drawings/Specification**

The drawings were objected to because they allegedly depict prior art in FIGS. 1-6 but do not include a legend indicating same.

Herewith Applicants submit a complete set of all drawings labeled as Replacement drawings and wherein FIGS. 1-6 include the requested legend ("prior art"). In the drawings submitted herewith Applicants found two (2) minor typographical errors in FIG. 8; namely, reference numeral "600" appears twice and "SAC" appears in lieu of "SAV" in step 616. The former is herewith corrected to "602" and the latter to "SAV." Applicants aver that no new matter is introduced by these minor corrections.

#### **Claims Rejections under 35 U.S.C. §112**

Claims 5 and 7-12 are rejected as allegedly failing to comply with the written description requirement.

Specifically, the Examiner alleges that there "does not seem to be any mention of chronic delivery of cardiac pacing in the Specification."

Applicants respectfully disagree but in order to expedite prosecution of the instant application herewith amend claim 5 to delete the term "chronic" (and although claim 14 also included said term claim 14 is herewith canceled thereby obviating any similar objection to claim 14).

**Claim Rejections under 35 U.S.C. §103**

Pending claims 1-5, 7-8, 11-12 and 14 stand rejected as allegedly obvious over the '623 patent to Kieval et al. (Kieval) in view of the '176 patent to Bornzin (Bornzin).

Applicants respectfully traverse the rejection.

First of all, regarding independent claim 1, the Examiner argues that Kieval provides a majority of disclosure contained in the claim but suggests that Bornzin stands for the proposition that hemodynamic data be collected during periods of rest and periods wherein said patient is performing the activities of daily living.

However, neither Kieval nor Bornzin provides for delivery of a cardiac pacing therapy based on a lowest measured estimated pulmonary artery diastolic pressure (ePAD) value *as measured when a patient is performing activities of daily living* in contrast to the presently claimed invention.

Accordingly, the combination of Kieval and Bornzin would not allow a person of skill in the art to realize the presently claimed invention. Thus, the rejection posited by the Examiner fails to reach the threshold of constituting a *prima facie* obviousness rejection and thus cannot succeed.

Based on the same rationale, independent claim 5, and claims depending therefrom and independent claim 14 also cannot fairly be said to be rendered obvious by the posited combination of Kieval and Bornzin and they too include claim limitation neither found nor suggested in Kieval or Bornzin.

Likewise, as for claims 4 and 9-13 the rejection based on the combination of Kieval and Bornzin in view of the '324 patent to Carlson likewise fails to constitute a *prima facie* obviousness rejection and therefore also cannot succeed. Withdrawal of the ground of rejection applied to claims 4 and 9-12 is thus earnestly solicited so that the claimed invention may proceed to timely issuance as U.S. Letters Patent.

### **Conclusion**

Applicants respectfully suggest that all pending claims are now in condition for allowance and earnestly solicit the Examiner to issue a Notice of Allowance in due course so that the claimed invention can pass to timely issuance as U.S. Letters Patent.

The Examiner is invited to contact the undersigned with any questions regarding the instant application and this Response.

Respectfully submitted,

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Date

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